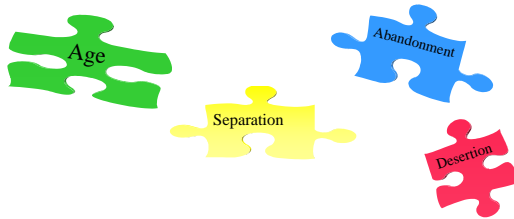


The Orphan Definition



Citizenship and Immigration Services

I-600A / I-600

- I-600A This petition determines the ability of the prospective adoptive parents to provide a proper home environment and on their suitability as parents.
- I-600 This petition focuses on whether the child is an orphan as defined in INA

I-600A APPROVAL

- I-600 cannot be approved unless there is a favorable determination on the advanced processing application. (Approval Form I-171H)
- However, a favorable determination of I-600A does not guarantee that the orphan petition – I-600 – will be approved.

Why Do We Need to Know the Definition?

- To adjudicate the Form I-600
 - The purpose of the Form I-600 is to determine whether the identified child is an orphan
 - If the child the petitioner has identified does not meet the Orphan definition, then the Form I-600 cannot be approved

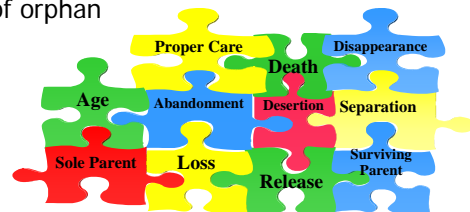
What Is an "Orphan" for Immigration Purposes?

INA 101(b)(1)(F) defines an orphan as:

A child, under the **age** of sixteen at the time a petition is filed in his behalf to accord classification as an immediate relative under section 201(b), who is an orphan because of the **death** or **disappearance** of, **abandonment** or **desertion** by, or **separation** or **loss** from, both parents, or for whom the **sole or surviving parent** is incapable of providing the **proper care** and has in writing **irrevocably released** the child for emigration and adoption; . . .

Components of the Definition

- To be able to know if a child is an orphan, you must know the definitions of the words used in the INA definition of orphan



Age of Child

- General Rule:
 - Must be under 16 at time petition is filed
- Exception:
 - Under 18 when child is the Natural Sibling of an adopted child *or* orphan who is adopted by the same parents
- Primary Evidence:
 - Birth Certificate



Death

- Natural parents are deceased *and*
 - Child has not acquired another parent
- Example:
- Child's natural parents both killed in car accident, is now considered an orphan
 - Grandparent is appointed guardian of child, child remains an orphan
 - Grandparent legally adopts child, child is no longer considered an orphan
- Evidence of parent's death
 - Death certificate



Disappearance

- Parent has unaccountably passed out of child's life, *and*
- Parent's whereabouts are unknown, *and*
- No reasonable hope of reappearance, *and*
- Reasonable effort made to locate them

Primary Evidence

- Decree from a court making the child a ward of the state and unconditionally divesting the parent(s) of all parental rights over the child



Abandonment

- Definition
 - Parent(s) has willfully forsaken all parental rights, obligations, and claims to child and forsaken control over and possession of the child
 - Without transferring these rights to a specific person
- Intention + Act = abandonment
 - Release by parent(s) to PAPs ☐ abandonment
 - Release to orphanage in preparation of adoption ☐
 - Relinquishment to third party cannot be contingent on adoption by a specific person



Abandonment cont.

- Foreign jurisdiction's definition of abandonment may or may not satisfy the INA for orphan status
- Primary Evidence
 - Court decree that unconditionally divests parent(s) of all parental rights over child
- Orphanages aren't the only way for parents to abandon, nor does a child's presence at an orphanage constitute abandonment by parent

Desertion

- Definition
 - Parent(s) has willfully forsaken and refused to carry out their parental rights and obligations that results in child becoming a ward of a competent authority
- Desertion vs Abandonment
 - Parent's inaction has caused local authority to step in and assume custody of child
 - Rather than parent's action to divest duties
- Primary Evidence
 - Court decree making child ward of state and unconditionally divesting the parent(s) of all rights



Separation

- Involuntary severance of child from parent(s) by action of a competent authority for good cause in accordance with the laws of the foreign-sending country
 - Termination of parental rights
 - permanent and unconditional
 - Finding of abuse, neglect, or "unfit"
 - Parent(s) must have been properly notified and given opportunity to contest
- Primary Evidence
 - Court decree and separation that unconditionally divests parent(s) of parental rights over child



Loss

- Involuntary severance or detachment of the child from the parent(s) permanently
 - Natural disaster, civil unrest, calamitous event beyond the control of the parents
 - Verified by competent authority in accordance with the laws of the foreign-sending country
- Primary Evidence
 - Court decree and showing that loss unconditionally divests parent(s) of all parental rights over the child



Irrevocable Release by Sole or Surviving Parent

- When sole or surviving parent is incapable of providing proper care and has irrevocably released the child for emigration and adoption in the foreign-sending country
- Only circumstance where a child released directly by its birth parent to the adoptive parent can qualify as an orphan
- Note:
 - Even when a sole parent has completed a written release, some countries do not permit a child to be adopted or to emigrate after adoption, so this form of release would not be valid in that country



Surviving Parent

- Definition
 - Child's living parent when the child's other parent is dead and child has not acquired another parent
 - Example – parent has not remarried
- Primary Evidence
 - Death certificate in the name of the deceased parent



Sole Parent

- Defined as the Mother of the child if:
 - Child born out of wedlock
 - Child not legitimated under law
 - Child has not acquired a stepparent, *and*
 - Natural father
 - Unknown,
 - Disappeared, abandoned or deserted the child, *or*
 - Irrevocably released, in writing, the child for emigration and adoption



Incapable of Providing Proper Care

- Definition
 - Sole or surviving parent is unable to provide for the child's basic needs, consistent with the *local standards* of the foreign-sending country
- Determination is *not* limited to economic or financial concerns
 - Medical or emotional difficulties
 - Long-term incarceration



Sole or Surviving Parent's Release or Relinquishment

- Release or Relinquishment must be:
 - Written;
 - In accordance with laws of foreign-sending country;
 - In a language that parent can read and sign, *and*
 - If illiterate, an interview with parent can determine that release was understood to be irrevocable; and
 - Irrevocable without stipulations or conditions
- Can identify the PAP to whom sole parent is releasing child